

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
CONTAINER CORPORATION OF AMERICA,  
  
Appellant,  
  
v.  
  
PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,  
  
Respondent.

PCHB No. 83-202

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, an appeal from the issuance of \$250 civil penalty for the alleged violation of Section 9.03(b) of Regulation I and WAC 173-400-040(1) came before the Pollution Control Hearings Board on January 27, 1984, and February 3, 1984, in Lacey through submission of affidavits, evidentiary attachments and argument by both parties. Gayle Rothrock, board chair, exercised presiding responsibilities.

Appellant's documents were submitted through its attorney, Dan R. Bartley. Respondent's documents were submitted through its attorney, Keith D. McGoffin.

1 The testimony and exhibits were examined and, having considered  
2 the contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 Pursuant to RCW 43.21B.260, respondent has filed with the Board a  
6 certified copy of its Regulation I and amendments thereto, which are  
7 noticed.

8 II

9 On August 17, 1983, at 3:01 p.m. respondent's inspector noticed a  
10 blue-grey colored plume rising from the #2 boiler stack of appellant's  
11 plant site in the Tide Flats area of Tacoma. After halting his  
12 vehicle and positioning himself at the end of "G" Street west of the  
13 #2 boiler with an unobstructed line of sight he recorded opacities  
14 ranging from 40% to 50% for 10 consecutive minutes (3:04 to  
15 3:14 p.m.). After discussing the incident with the plant manager and  
16 boiler room operator on duty the inspector issued Notice of Violation  
17 19170.

18 III

19 Prior to writing up the Notice of Violation respondent's inspector  
20 telephoned the Puget Sound Air Pollution Control Agency (PSAPCA) to  
21 ascertain whether appellant had called in an upset or breakdown  
22 condition under terms of Section 9.16 of Regulation I. No such call  
23 was on record. In discussing the incident with the plant manager it  
24 was asserted the plant was in an emergency response shutdown and  
25 start-up mode reacting to a bad condition on the long paper machine.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 83-202

1 The machine and boiler shutdown at 2:15 p.m. and the boiler was  
2 re-started sometime between 2:45 p.m. and 3:05 p.m., according to  
3 appellant's assertions. The boiler, which is fueled by Bunker C oil,  
4 was manipulated to slowly come up to 150 pounds of steam pressure, its  
5 usual operating state.

#### 6 IV

7 Respondent afterward issued Notice and Order of Civil Penalty 5836  
8 (\$250) for the alleged violation of opacity standards as expressed in  
9 Section 9.03(b) of Regulation I and WAC 173-400-040(1). The Notice  
10 and Order of Civil Penalty is the appellant's first and is the subject  
11 of the instant appeal.

#### 12 V

13 Any Conclusion of Law which should be deemed a Finding of Fact is  
14 hereby adopted as such.

15 From these Findings the Board comes to these

#### 16 CONCLUSIONS OF LAW

#### 17 I

18 Under the laws of the State of Washington and Section 9.03 of  
19 respondent's Regulation I it is unlawful for any person to cause or  
20 allow the emission of any air contaminant for a period totaling three  
21 minutes in any one hour which is of an opacity equal to or greater  
22 than 20%. The subject excursion was greater than 20%.

23 For such emissions Section 3.29 of the same regulation provides  
24 for a civil penalty of up to \$250 per day for each violation.

25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 83-202

1 II

2 Section 9.16 of Regulation I provides that no Notice and Order of  
3 Civil Penalty shall issue for an opaque emission which is excusable as  
4 a result of a properly reported upset or breakdown condition in any  
5 operating system. The August 17, 1983, mid-afternoon upset condition  
6 at appellant's plant site was not timely reported by call to  
7 respondent agency and, thus, does not qualify as an excusable incident.

8 III

9 Appellant violated Regulation I and the Washington Administrative  
10 Code by allowing or causing an air emission of smoke in excess of the  
11 opacity limits established by regulations.

12 IV

13 Since there is no record of previous violations of PSAPCA's  
14 Regulation I and there were unforeseen circumstances aggravating the  
15 boiler stack emissions, part of the subject civil penalty should be  
16 suspended.

17 V

18 Any Finding of Fact which should be deemed a Conclusion of Law is  
19 hereby adopted as such.

20 From these Conclusions the Board enters this  
21  
22  
23  
24  
25

ORDER

The Notice and Order of Civil Penalty #5836 is affirmed, but \$125 thereof is suspended on condition that appellant not violate respondent's Regulation I opacity standards for six months from the date of issuance of this Order.

DATED this 28<sup>th</sup> day of February, 1984.

POLLUTION CONTROL HEARINGS BOARD

  
GAYLE ROTHROCK, Chairman

  
DAVID AKANA, Lawyer Member

  
LAWRENCE J. FAULK, Member